App. F. IX-4

Previous References. 1943-44 (= War)

W File No. 174-43
Serial Nos. 1 to 4

Later References.
W 94-44-1

(38)

GENERAL AND REVENUE SECRETARIAT

Serial Nos. Four only.

Part B for May 1944.

SUBJECT

Requisition of moveable property located in Indian States.

D.O. Krishnan
30.5.44

2089/W

Requisitioning of Movable property Locks in Indian States.

Continuation Sheet. File No. W Current No. 174 of 43-44 Page.

From The Secy to the Govt of India
No P. 26(1) 42/W dated 24th Feby 44
forwards a copy of Supply Dept Memorandum re
the procedure to be followed for requisitioning
of property in Baroda under Rule 75A of the Defence
of India Rules and stating that the procedure indicated
by the Political Dept may be observed for requisitioning
movable property Locks in Indian States.

1) It is seen that the officers asking the
Resident to requisition goods will indicate wherever
possible what they consider to be reasonable prices
for the goods. But the procedure requires to consult
the Resident before finally deciding on the compensation
the Resident in turn consulting the appropriate Branch
Secretariat of the Supply Dept thro the Controller
Supplies concerned. Should for personal Lockers which
a Ruler may be sent to the Resy that this Govt has
no objection to follow the procedure indicated whenever
they are approached by the Resident to requisition
Stores on behalf of the Govt of India. Till now the
Controller of Supplies himself was directly addressing
this Govt re the freezing and requisitioning of Stores.

PS 26/2

2) The Residency letter is for
Remark. According to it
Resident has suggested that whenever
disagreement between the State
& the Resident, the matter is to be
settled by the Political Dept. This

2089/W 6367/42 Requisition of movable property owned in Indian States.

Continuation Sheet.. File No. / Current No. of Page.

does not seem to be fair or consistent with the claims of the State. While there is no objection to the purchasing Deptt to give its own views regarding the value, the final right of fixing the price should rest with the Govt who can certainly be trusted to assess the compensation in a fair & reasonable manner, having regard to all circumstances & in the light of information & opinion which may have been collected by the Deptt at whose instance the requisitioning order may have been issued.

Dayal: WD 28/2/44 83rd

28/2/44

3) The question involves an important principle. The State should have the final right of fixing compensation for the goods requisitioned within its jurisdiction.

Min Edn
& Dewan
Hyd Law Dept

WD 28/2/44

Full discretion to decide whether the request of the central Govt should be complied with or not without prejudice to its own rights

Cas

M 28/2/44

4) It is our property that is to be requisitioned, & it does not seem to be fair that the compensation amount should be ultimately fixed by the Political Dept, in case of disagreement. Under Sec 75 A, it is the Govt of India that is the authority to fix the compensation.

5) We will be the best judges of the local circumstances, & even if the Political Dept fixes

Continuation Sheet.

Requisition for movable property located in Indian States (6367)

File No. _____ of _____ Page. 2

Current No.

fixes the compensation, it cannot be enacted in Mysore, unless we accept it & pass it off, as the compensation fixed by us. If in the agreement letter to us it is insisted that just the Govt. that will fix the compensation (in such cases) because we might be best-suited to ascertain existing at the time of requisition. If this does appear to be feasible, then the price be fixed by the Arbitration tribunal appointed by both the Govts with unanimous consent.

Dear Secretary) 3
29/2/44

6) Evidently the request is for compensation, but it will be an encroachment on our powers. The requisition has to be made by the owner voluntarily this Govt - & we may do it when there is a request from the Residency, but the final voice in determining the compensation should rest with us, though there may be previous consultation. Reference to Political Dept in case of difference cannot be agreed to -

7) Cno
1-3-44

Chief Secretary) 3/1/3/44.

M in Ed^n
& Dewan"

Dec 1/3/44

OFFICE OF THE REGISTER FOR REGISTRATION
Date 1/3/1944
No. 5802

2089

Continuation Sheet. W

File No. Requisitioning of movable property (ex Indians)
Current No. of States Page.

I agree with para 2. Reply being informed accordingly. JR 2/3/44

5147 '11

5802/ESH.

A supplementary may be put up bringing together the views expressed in paras. '2 & 3'. Also a short and fully contained note to the Hon'ble Committee of Members

NLL 6/3/44

OFFICE OF THE MINISTER
LAND & LAW
8 MAR 1944
No. 5506.

War 9.3.44

WD 10/3/44

13/8/44

5947

Submitted with a draft letter to the Hon'ble for consideration

10/3

Please type draft.

WD 11/3/44

9266 13.3.1944

Submitted a typed draft.

13/3

Dft reply for consn.

Min Edn & Dewan. 15/3 WD 13/3/44

Obtained the Dewan's instn. WD 16/3/44

Hon'ble Chief Secy WD 16/3/44

WD 1140—GPB—50,000—5-11-42

2089 Requisitioning of Movable property Locked in Indian States.

Continuation Sheet. W. W. File No. Current No. 194 of 43-44 Page.

Revised Aft on instructions from Comm'n.

Dewan) WO 23/3/44

5760 Mem 24/3/44

Early | Pl. put up this correspondence may be put up to the Cabinet before the Committee of Members meet.

Issue slip

2 Issued No. Pol 2029 d 28.3.44 to Resy Secl. with Aft on note. 2 SL

SC 5/4/44.

6108 P.S.D. SL) Submitted.

6/4/44

These papers may be submitted to Hon'ble Member for info. P.N. -

A letter sending copies of the note for consideration at the meeting of Members may be put up

Mem 7/4/44

Submitted herewith

Sd/- Illegible

Submitted to His Highness.

Rule 75 A of the Defence of India Rules, as in force in Mysore, empowers the Government to requisition any moveable or immoveable property, when it is necessary or expedient to do so for the defence of British India, public safety, maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, and to determine the compensation payable for the property requisitioned.

A letter was recently received from the Residency stating that the Political Department desire that the following procedure may be adopted for requisitioning moveable property located in Indian States:

" Officers of the Government of India who are empowered to order the requisition of stores in British India under the Defence of India Rules will approach the Resident concerned direct where they desire such goods located in Indian States to be requisitioned. When such an approach is made, the Resident will arrange with the State for the requisition and acquisition of the goods in question and for the determination of the compensation to be paid. The States will kindly follow the principles laid down in the Supply Department Office memorandum referred to above, for the fixation of compensation and will consult the Resident before finally deciding on the compensation, the Resident in turn consulting the appropriate Branch Secretariat of the Supply Department through the Controller of Supplies concerned. The officers competent to approach the Resident for requisitioning goods will indicate whenever possible what they consider to be reasonable prices for the goods, and this information will be communicated to the State so that the matter can be settled without avoidable delay. In cases where there is disagreement as to the compensation to be paid or on any other question, the Resident will refer the matter to the Political Department. "

To this letter a reply has been sent that under the rules it is this Government alone which is competent to take a final decision in respect of matters connected with requisition or acquisition proceedings and that while they have no objection to the department offering its own opinio on any matter, the State should have full discretion to decide the question of compensation or any other connected matter. They have also been informe that the Political Department cannot act as an arbitrator and give a final

decision

decision on any issue arising out of the proceedings.

It is probable that some other States also have received similar communications from their Political Officers. As it is desirable for the Ministers to exchange views as to the correct attitude to be adopted in this matter, I have suggested that the subject may be discussed at the ensuing meeting of the Committee of Ministers.

The papers are submitted for His Highness's gracious perusal.

N Raghavendra Rao

Bangalore,
8th April 1944.

DEWAN.

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Procedure for requisitioning moveable property located in Indian States.

Orc

9/4/'44

Chief-V.C.)

13/4/

General and Revenue

Secretariat.

C 842

SUBJECT :—

Procedure for requisitioning moveable property located in Indian States.

(*)

14. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Ministers for perusal after the issue of orders.

16. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after, to the Chief Secretary for circulation to the Ministers.

17. In all other cases, the files will first be circulated to the Ministers at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Council of Ministers for perusal of His Highness' orders before/after issue of orders. (*Vide* Rules 14, 16 and 17 of the Subsidiary Rules of the Mysore Government Business Rules.) (*)

Chief Secretary to Government.

Through the Secretary to Government,

.....Department.

6387 — Minister for Revenue and [illegible]

6648/15/4 — Minister for Public Works. 15.4

7225/20.4 — Minister for Local Self-Govt. and Public Health. 27.6.64

6350/17.4 — Minister for Industries and Supplies.

6815/18/4/64 — Minister for Education. 9/4

WD 0718—GPB—1,000—11-9-42

2089/W
2616/W

Procedure for requisitioning moveable property located in Indian States.

Continuation Sheet. File No. W / Current No. 174 of 43-44. Page.

3

Letter No 7 26(1)-42/W dt 1.5.44 from the Secy to the Hon'ble the Resident intimating the views of the Political Dept in the matter.

It is stated that the Political Dept confirm the presumption of this Govt that whenever a refce is made to the Pol. Dept by the Resy, in cases where there is disagreement between Supply Dept & this State as to the compensation to be paid in respect of articles requisitioned or any other question, such refce contemplates that the Pol Dept may further examine the matter in consultation with the Supply Dept & that there is no intention of interfering with the State's right of fixing what seems to them to be reasonable compensation.

Subd for kind perusal.

Kni Lalla Chariar

7104

4/5/44

Sec

Secy to Govt

Supply Secy

Dairy factory.

and appear to be

4/5

Min Edn & Dewan

W 8/5/44

9/5

Rev 13/5/44

W 15/5/44

Subd. for ordering papers may be filed.

15/5

15/5

Yr hble

2754/W. Requisition of movable property located in Indian States.

Continuation Sheet. File No. W Current No. 174 of 43-44 Page.

Letter no. 726(1)-42/W dt 22.5.44 from 4. the Secy to the Hon'ble the Resident, forwg for information copy of O.M. from the India Govt, Supply Dept. dt 15.4.44.

Subd for perusal.

24/5/44.

W 1474-43-1.

No.F.26(1)-42/W. 2089/V

From

The Secretary to the Hon'ble the Resident in Mysore.

To

The Chief Secretary to the Government of His Highness the Maharaja of Mysore, Bangalore.

Bangalore, the 24th February 1944.

Requisition of movable property located in Indian States.

- - -

Sir,

I am directed to forward a copy of office memorandum from the Government of India, Department of Supply, No.M-8(34), dated the 18th February 1944 regarding the procedure to be followed for requisitioning of property in British India under rule 75A of the Defence of India Rules.

2. The Political Department desire that the following procedure may be observed for requisitioning movable property located in Indian States.

3. Officers of the Government of India who are empowered to order the requisition of stores in British India under the Defence of India Rules will approach the Resident concerned direct where they desire such goods located in Indian States to be requisitioned. When such an approach is made, the Resident will arrange with the State for the requisition and acquisition of the goods in question and for the determination of the compensation to be paid. The States will kindly follow the principles laid down in the Supply Department office memorandum referred to above, for the fixation of compensation and will consult the Resident before finally deciding on the compensation, the Resident in turn consulting the appropriate Branch Secretariat of the Supply Department through the Controller of Supplies concerned. The officers competent to approach the Resident for requisitioning goods will indicate whenever possible what they consider to be reasonable prices

for

for the goods, and this information will be communicated to the State so that the matter can be settled without avoidable delay. In cases where there is disagreement as to the compensation to be paid or on any other question the Resident will refer the matter to the Political Department.

3. The Hon'ble the Resident will be grateful if the Government of Mysore will be so good as to follow the above procedure for fixing compensation whenever they are approached by him to requisition stores on behalf of the Government of India.

I have the honour to be,
Sir,
Your most obedient servant,

SECRETARY TO THE RESIDENT.

MAP:

S. S.
I. C. & Sons, Cal.—No. 728R (G-69)—11-7-40—60,000 Pads.

CONFIDENTIAL. (Sam 2 : C p. 7)

No. M-8 (34).

GOVERNMENT OF INDIA.

DEPARTMENT OF SUPPLY.

(MAIN SECRETARIAT).

New Delhi, the 18th February, 1943.

OFFICE MEMORANDUM.

SUBJECT.—*Procedure to be followed under Rule 75A of the Defence of India Rules.*

I. INTRODUCTORY.—(*i*) The orders in this Memorandum supersede all previous orders on requisitioning and connected matters. They are to be read with Rule 75A of the Defence of India Rules (Annexure A) and Section 19 of the Defence of India Act (Annexure B). All officers concerned, or likely to be concerned, with requisitioning or other transactions under these provisions are required to study them, and are responsible for the correct observance of the procedure in all cases handled by them.

(*ii*) These orders will not apply in cases in which they are at variance with any procedure specially prescribed, *e.g.*, in the case of frustrated cargoes.

II. ANALYSIS OF THE POWERS AVAILABLE.—The powers conferred by Rule 75A of the Defence of India Rules may be exercised only when their exercise is necessary or expedient :—

(*i*) for securing the defence of British India; or
(*ii*) for securing public safety; or
(*iii*) for securing the maintenance of public order; or
(*iv*) for the efficient prosecution of the war; or
(*v*) for maintaining supplies and services essential to the life of the community.

One or more of these conditions must be satisfied before the powers can be exercised at all. In the order in which they are likely to be used, the powers available are as follows :—

(*a*) To call for information about the property in the possession of any person, and to block the disposal of such property (or the structural alteration of such property if the property is a building)—Rule 75A (*5*).

(*b*) To enter and inspect premises—Rule 75A (*5a*).

(*c*) To requisition any property and to make subsidiary orders in connection with the requisitioning—Rule 75A (*1*).

(*d*) To acquire any requisitioned property—Rule 75A (*2*).

(*e*) To determine and pay compensation for moveable property requisitioned or acquired—Rule 75A (*4*).

NOTE.—Compensation for immoveable property must be settled in accordance with Section 19 of the Act.

It is necessary to be precise as to the nature of these powers. The power to call for information and block disposal and the power to enter and inspect are aids to requisitioning. They commit the authority using them to nothing and are *not* essential preliminaries to the exercise of the powers to requisition and acquire.

The powers to requisition and acquire, on the other hand, involve certain financial commitments, and when these powers are used, compensation *must* be paid under sub-rule (*4*) of Rule 75A, or under Section 19 of the Act, unless the transaction is completed as an ordinary sale, or Government determines under sub-rule (*4*) of Rule 75A that no compensation is due. Requisitioned property which has not been acquired may be used and dealt

with as the requisitioning authority thinks fit, but title in it does not pass to the requisitioning authority; acquired property, on the other hand, vests in the acquiring authority free from all encumbrance. The power to acquire can be exercised *only* in respect of property which has been requisitioned.

III. AUTHORITIES COMPETENT TO EXERCISE THE POWERS AVAILABLE.—The powers to call for information and block disposal, to requisition, to acquire, and to determine compensation (for moveable property) rest primarily with the Central or the Provincial Government, and the power to enter and inspect rests with persons authorised by the Central or Provincial Government. Under Section 2(*4*) of the Act, the Central Government may delegate all or any of its powers to any officer or authority. It follows that all orders under Rule 75A must be signed in the Supply Department either by a Secretariat Officer (who is competent to act for the Central Government) or by an officer to whom powers have been delegated. A list of officers in or under the Supply Department authorised (*i*) to issue orders under Rule 75A and (*ii*) to enter and inspect under Rule 75A (*5a*) is appended (Annexure C). This list excludes delegations made in connection with any special procedure, *e.g.*, Frustrated Cargoes.

IV. PROCEDURE.—(A) *Calls for information and blocking of disposals*—(*a*) *Object of Action* :—Although a demand for information is not a necessary preliminary to the issue of a requisition order, it enables the requisitioning authority to obtain detailed information respecting the property which it is intended to requisition and to block its disposal for a short period until a decision has been reached whether the property should be requisitioned or released.

(*b*) *Circumstances in which the power should be used.*—(*i*) A demand for information may be issued only with a view to requisitioning or determining compensation. This normally implies that some known authority inside or outside the Supply Department has a specific use for the goods and will pay the compensation in respect of them. There are, however, cases in which a shortage, whether of finished goods or raw materials, justifies independent action by the Supply Department. In such cases, the Supply Department must be prepared to take over the goods or materials and to pay the compensation, the placing of the goods by issues from stock or otherwise being settled at leisure. Where the intention is not to requisition or to determine the compensation payable, but information is required for other purposes, action should be taken not under this sub-rule, but under Rule 81.

(*ii*) Where there is doubt about the availability of an article of the required quality and standard, or in the quantities required, and it is intended to requisition the article, a demand for information should normally be issued as a preliminary to requisition. The knowledge thus obtained of the existence of the article will provide a basis for legal proceedings in the event of the owner's failure to comply with the requisition.

(*iii*) A demand for information should not normally be issued until actual difficulty is experienced in obtaining supplies of an article at a reasonable price.

(*c*) *Form to be used and method of service.*—The demand for information should be addressed to the person or persons in possession of the property in the prescribed form W. S. B. 15 (Annexure D). For officers competent to sign the form in the Supply Department see Annexure C. The method of service, as prescribed in Rule 119 of the Defence of India Rules (Annexure E), should be carefully followed. Where the order is of a general nature or affects a class of persons, notice of the order should be published in such manner as may be best adapted for informing persons whom the order concerns. Where an individual person is affected, the order may be served on him either personally, his acknowledgment being taken; or by registered letter; or where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family, or by affixing such copy on some conspicuous part of the premises where he last resided or carried on business. The order may be served through the local Purchase Officers or through the Controller of Supplies, and in cases where the order is not served, through the Controller of Supplies, a copy of the order should invariably be sent to him.

(*d*) *Return of the demand, period of blocked disposal and further proceedings.*—(*i*) In Clause 1 of the demand for information, it is necessary to specify the date by which information shall be furnished. This date should ordinarily be 7 days from the date of service of the order, but the period allowed should be fixed with due regard to the nature of the demand, and the amount of work likely to be required on the part of the recipient in complying with it.

(*ii*) In Clause 2 of the demand for information, it is necessary to specify the period for which disposal shall be blocked. This period should ordinarily be 15 days. Freezing of stocks entails hardship on the firm or person concerned and it is most important that the period of freezing should be the minimum actually necessary. The 15 days' limit prescribed above should not be exceeded except on consideration of a recommendation by an officer not lower in rank than a Deputy Director General, Deputy Chief Controller of Purchase, or Controller of Supplies, and on the authorisation of an officer not lower in rank than a Deputy Secretary.

(*iii*) As the period of 15 days specified in Clause 2 of the demand for information commences from the date of acknowledgment of receipt of complete information, this date is an important starting point and the acknowledgment must, therefore, be issued without delay.

(*iv*) If, for any valid reason, an extension of the period of blocked disposal is considered necessary, a further order should be issued before the period of 15 days expires. Such an extension should normally be for 10 days and the order should be issued as soon as it becomes apparent that the period will have to be extended.

(*v*) Every effort should be made to reach a decision regarding the requisition or release of " frozen " goods within the initial period of 15 days. If the goods frozen are manifestly in short supply and in more or less constant demand, they should be requisitioned without reference to specific indents. It does not matter whether at the time of requisition the officer concerned is or is not able to say that the goods will go to a particular indentor, and he need not have despatch instructions. All that he needs is authority to pay compensation.

(*vi*) All indentors should be given clearly to understand that if goods are frozen at their instance and clear despatch instructions are not given within 15 days of their demand, the Supply Department will not be responsible for procurement on their behalf, and will be free to return the goods, or to requisition and deal with them as seems best.

(*vii*) Haggling about compensation before goods are taken over should be cut out entirely. If the goods are needed, they should be requisitioned and removed as expeditiously as possible, and the compensation should be settled later in accordance with the procedure laid down in para. IV (E) below.

(*viii*) As soon as it is apparent that " frozen " goods will not be needed a release order should be issued. A release order in respect of frozen goods amounts in effect to a withdrawal of the directions issued under sub-rule (*5*) (*b*) of rule 75A ; it can only be made by an authority competent to issue the directions in the particular case.

(B) *Entry and Inspection.* (*a*) *Object of Action.*—Before or after a demand for information or requisition order or acquisition notice has issued, it is sometimes necessary to exercise this power with a view to determining whether, and if so in what manner, an order under Rule 75A should be made, or with a view to securing compliance with such order.

(*b*) *Circumstances in which the power should be used.*—The circumstances are not easy to define and officers authorised under this sub-rule should use their discretion. The power to enter and inspect should be used unhesitatingly where there is reason to believe that information is being suppressed, or goods are being disposed of in violation of any order issued under Rule 75A, and it is considered necessary to inspect any premises or property to secure compliance with the order. It may also be necessary to enter and inspect before an order under Rule 75A has issued, *e.g.*, where goods are immediately required and their existence can only be determined by inspection.

(*c*) *Issue of Authorizations.*—An authorization under the sub-rule can be issued by a Secretariat Officer, or by any officer to whom the powers of the Central Government under this sub-rule have been delegated. The authorization may take the form of a general Notification or a simple letter. An officer who is empowered under the sub-rule to issue an authorization is not *ipso facto* empowered himself to enter and inspect any premises unless he actually issues an authorization in his own favour. Certain classes of officers in the Supply Department have been authorized to enter and inspect under this sub-rule (Annexure C).

(*d*) *Conduct of parties carrying out inspection.*—It may be necessary at times to seek the assistance of officers of a Provincial Government. Where obstruction is apprehended, or has actually taken place, the assistance of the Police should be taken, but the Police should not be called in without clear justification. Obstruction of an officer who is authorized to enter and inspect is a cognisable offence under Rules 120 and 128. Inspection should, as far as possible, be made between sunrise and sunset and, if possible, in the presence of witnesses. Due care should be taken not to offend the religious or social susceptibilities of occupants of the building or premises, and parties carrying out inspections must do their work quietly and politely.

(C) *Requisitions.* (*a*) *Object of action.*—Requisition enables Government to obta n possession of property, whether moveable or immoveable, and to use or deal with it in such manner as may appear to it to be expedient.

(*b*) *Circumstances in which the power should be used.*—(*i*) No property, whether moveable or immoveable, may be requisitioned unless one or more of the conditions precedent is fulfilled : see para. II above.

(*ii*) Property should ordinarily be requisitioned if—(*a*) it is required urgently to cover either an outstanding demand already placed on the Supply Department or a known shortage of raw materials or finished goods, and/or (*b*) it cannot be obtained quickly enough or at a reasonable price by any other method.

(*iii*) When a demand for information reveals the existence of articles which it is essential that Government should have, a requisition should normally follow unless the firm or person concerned expresses willingness to sell to Government at a reasonable price and there is no reason to apprehend that the price is likely to be unacceptable, or that the articles will not reach Government.

(*iv*) Where other conditions are fulfilled, deliberate refusal to sell to Government for political or other reasons, or at a reasonable price, or inability to sell to Government due to the existence of prior contracts are good grounds for the use of this power.

(*v*) Financial concurrence should invariably be obtained before any property is requisitioned.

(*c*) *Form to be used and method of service.*—The requisition order should be addressed to the person or persons in possession of the property in the prescribed form W.S.B.-157 (Annexure F). For officers competent to sign the form in the Supply Department see Annexure C, and for method of service see para. IV (A) (*c*) above.

(*d*) *Subsidiary instructions.*—The requisition order directs the owner or other person in possession of the property to deliver it within a specified period to a person or authority named in the order, and meanwhile not to dispose of it in any manner without the permission of the Requisitioning Authority. After possession has been delivered, an inventory should be made, and the property should be despatched to the appropriate consignee in accordance with the despatch instructions. A copy of the inventory should be sent to the consignee. The compensation question should be considered separately and suggestions regarding the compensation to be paid for the stores should not be included in the despatch instructions. Experience shows that the issue of supply orders (indicating the compensation to be paid for the requisitioned stores), along with despatch instructions, is a fruitful cause of delay in obtaining delivery of the goods.

(D) ACQUISITIONS.—(*a*) *Object of Action.*—Requisition does not confer on Government full rights of ownership in the requisitioned property. To secure such rights, it is necessary to acquire the property after it has been requisitioned.

(*b*) *Circumstances in which the power should be used.*—(*i*) Property can be acquired only after it has been requisitioned. Where the property is required for a limited period, *e.g.* for the duration of the war, and Government's interests can be secured by the right to make use of or deal with it, without acquiring full rights of ownership, requisition of the property should suffice. Examples are—requisition of motor transport or housing accommodation for limited periods. If Government's interests cannot be secured by the right to make use of or deal with the property and it is necessary that Government should acquire full rights of ownership free from all encumbrance, or there is no reasonable prospect of restoring the property to the original owner, the property should normally be acquired. The exact circumstances in which requisitioned property may be acquired are not easy to define. Each case should be dealt with on its merits and financial concurrence should invariably be taken before an acquisition notice is issued.

(*ii*) It is not, however, always necessary to resort to acquisition in order to secure to Government full rights of ownership in the requisitioned property. In many cases after requisition, a price is agreed upon in the normal manner with financial concurrence with the owner of the property and the transaction is completed as a sale to which both Government and the owner of the property are consenting parties. When this is done, ownership passes to Government as in the case of ordinary purchase on completion of the sale. In such cases, the requisition order should be cancelled, and the party concerned informed that in view of the course the transaction has taken subsequent to the requisitioning, the requisition order has been cancelled. This formality is not absolutely essential; the important point is that there should be a complete settlement in respect of the goods taken over, and no ground for any subsequent dispute. Where purchase at an agreed price is not possible and there is any dispute regarding the compensation to be paid, an order of acquisition followed by a formal order fixing compensation is necessary.

(*iii*) If land has been requisitioned under the Defence of India Rules, either to secure immediate possession or as a temporary measure while the question whether it is desirable to acquire is decided, and it is proposed to acquire it, acquisition proceedings should ordinarily be taken under the Rules and not under the Land Acquisition Act. In other words, action should ordinarily be taken either entirely under the Land Acquisition Act, or entirely under the Defence of India Rules. The reason for this is that otherwise it might be necessary to make duplicate arrangements for compensation; under the Land Acquisition Act in respect of the acquisition, and under the Defence of India Act in respect of the requisitioning.

In certain cases, however, where a Notification under Section 4 of the Land Acquisition Act has issued in respect of any area and the whole or any part thereof is subsequently requisitioned in order to obtain immediate possession, it may be preferable to limit the requisition to a definite period and complete the acquisition of the entire area (including any area requisitioned) under the Land Acquisition Act. For example, where improvements have been effected on the land after issue of the Notification under Section 4(*1*) of the Land Acquisition Act and it is desired to exclude the value of such improvements in assessing compensation for the acquisition, or the proceedings initiated under the Land Acquisition Act in respect of land which has been requisitioned have reached an advanced stage and it is possible by agreement with the owner to avoid two sets of compensation proceedings, the acquisition may be completed under the Land Acquisition Act. Examples of an advanced stage of proceedings under the Land Acquisition Act are the issue of a public notice under Section 9 (*1*), or in exceptional cases, the issue of a declaration under Section 6 (*1*) of the Act. Parallel proceedings under the Defence of India Rules and the Land Acquisition Act should, as far as possible, be avoided, but they are *not* completely barred, and if the advantages outweigh any possible disadvantages such as are mentioned above, the proceedings may be combined. The implications should, however, be most carefully examined in any case before the acquisition of land which has been subjected to requisition is completed under the Land Acquisition Act, and doubtful cases should be referred to Government.

(*c*) *Form to be used and method of service.*—Unlike demands for information and requisition orders, the acquisition notice is addressed to the owner of the property. Where the owner of the property is known and is readily traceable and there is no dispute about ownership, the acquisition notice should be addressed to him in the prescribed form W.S.B. 158 (Annexure G). Where the owner is not known or is not readily traceable, or ownership is in dispute, notice should be published in the official gazette in the prescribed form W.S.B. 160 (Annexure H). The Central Government's powers under sub-rule (*2*) of Rule 75A have not been delegated save to certain officers in respect of frustrated cargoes and temporarily in respect of timber and only Secretariat Officers are competent to sign the form or the Gazette Notification. For method of service of the notice, see para. IV (A)(*c*) above.

(*d*) *Subsidiary instructions.*—Where property is to be acquired immediately, the requisition order and notice of acquisition should be prepared simultaneously. The former may be issued at any time, but the latter should not be served before the property has been requisitioned. The acquisition notice has the effect of giving full rights of ownership to Government in the requisitioned property. With effect from the date of its service or publication in the Gazette the property vests in Government free from all mortgage, pledge, lien or other similar encumbrance, and the period of requisition ends. Further action should be taken as in para. IV (C)(*d*) above, if such action has not already been taken immediately after requisition.

(E) COMPENSATION.—(*a*) *General principles.*—(*i*) It is obligatory on Government to pay compensation when property is requisitioned or acquired [Rule 75A (*4*) and Section 19].

(*ii*) Where property is moveable, Government has full power to determine compensation; where requisitioned moveable property is released before it has been used or dealt with by Government, no compensation should ordinarily be payable [Rule 75A (*4*)].

(*iii*) Where the property is immoveable, the amount of compensation must be fixed by agreement or in default, by arbitration (Section 19).

(*iv*) Whether the property is moveable or immoveable, or is requisitioned or acquired, compensation is always payable to the *owner*; the term "owner" includes the owner of any rights in the requisitioned property. The proviso to rule 75A (*4*) makes special provision for a special case; see sub-para. (*b*)(*ii*) below.

(*v*) When a requisition order is issued, it can only mean that the property is being taken for Government's needs and so payment must invariably be made from Government account. If the article is to be used by a firm engaged on Government contract, the compensation paid by Government for the property should be credited against payments to the firm for the contract. Directions should not be issued that the compensation for the property requisitioned will be paid to the firm from which it is taken by the firm to which it is made over.

(*vi*) Financial concurrence should invariably be taken before compensation is determined or paid or settled by agreement.

(*b*) *Compensation for moveable property.*—(*i*) The principles to be followed in determining compensation for moveable property which has been requisitioned or acquired are laid down in this Dept.'s O. M. No. M.-8(7), dated the 20th January 1942, and the enclosures thereto (Annexure I). These instructions should be carefully followed in all cases.

(*ii*) In cases where immediately before the requisition the property was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined by Government as the total compensation payable in respect of requisition or acquisition should be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by Government in this behalf may decide to be just [proviso to Rule 75A(*4*)].

(*iii*) It should be noted that requisitioning is based not on ownership, but on possession, and it is, therefore, necessary to be careful about title before payment is made for requisitioned property. In cases where ownership is in dispute and the dispute is incapable of summary adjustment in the process of determining compensation, the correct procedure is to refer the

disputants to a Civil Court. Proceedings for the determination of compensation should not, however, be stayed pending production by either party of the Court's decree, but formal orders determining the amount payable should be recorded and communicated to the disputing claimants with an offer to deposit the amount in the Court. Any cases of difficulty should be referred to the Main Secretariat before payment is made to the owner.

(*iv*) Although Government has full power to determine compensation for moveable property which it requisitions or acquires, it is always desirable that the amount of compensation should be arrived at by agreement. This does not, however, mean that elaborate and prolonged negotiations should be undertaken in order to arrive at an agreement. The object should be to avoid active disputes. Statutory powers should be resorted to as soon as it becomes evident that a quick and easy agreement is not likely.

(*v*) The order determining compensation should be made in form W.S.B. 159 (Annexure J). The order should be signed by a Secretariat Officer since the Central Government has not delegated its powers under Rule 75A(*4*).

(*c*) *Compensation for immoveable property.*—Where immoveable property is requisitioned and then acquired, compensation is payable in accordance with the provisions of Section 19 of the Defence of India Act. Immediately after requisition (or acquisition, if acquisition proceedings are launched simultaneously), an attempt should be made to fix the amount of compensation by agreement with the owner of the immoveable property. Elaborate negotiations need not be entered into, but the reasonable price or the market price, as defined in this Dept. O. M. No. M.-8(7), dated the 20th January 1942 (Annexure I), should be ascertained and an offer made to the owner. The alternative to agreement is arbitration, but every effort should be made to avoid resort to arbitration since this is an expensive and cumbersome procedure. Where no agreement can be reached, it is obligatory on Government to appoint an arbitrator who is empowered to make an award. If an agreement is reached, a statement of the agreement should ordinarily be prepared and the document should be signed by the owner on the one hand and by a Secretariat Officer (in the Supply Deptt.) or the Collector of the District to whom the powers of the Central Government in this respect have been delegated by Defence Department Notification No. 1514-OR/42, dated the 1st August 1942, on the other.

R. K. NEHRU,
Joint Secretary to the Government of India.

To

Joint Secretary Munitions Production.
Deputy Secretary (Supply).
Director General, Indian Medical Service.
Director General, Shipbuilding and Repairs.
Chief Administrative Officer (Purchase).
All Controllers of Supplies.

Copy forwarded for information to :—

(1) Provision Co-ordination and Supply Section for communication to Branches of General Headquarters, India.
(2) Addl. Financial Adviser (Supply Finance).
(3) Joint Financial Advisers (Supply Finance), New Delhi, Calcutta and ombay and Deputy Financial Advisers (Supply Finance), Lahore, Cawnpore id Madras.
(4) Controller of Printing and Stationery.
(5) Railway Board.
(6) Defence Department.
(7) Food Department.
(8) Deputy Financial Adviser (Food).

M. ASLAM,
Assistant Secretary to the Government of India.

ANNEXURES.

Annexure A.—Rule 75A of the Defence of India Rules.

Annexure B.—Section 19 of the Defence of India Act, 1939.

Annexure C.—List of officers of the Supply Department authorised (*i*) to issue orders under rule 75A, and (*ii*) to enter and inspect under rule 75A (*5a*).

Annexure D.—Form No. W.S.B. 15. Demand for Information.

Annexure E.—Rule 119 of the Defence of India Rules.

Annexure F.—Form No. W.S.B. 157. Requisition Order.

Annexure G.—Form No. W.S.B. 158. Notice of acquisition where owner is known and there is no dispute as to ownership.

Annexure H.—Form No. W.S.B. 160. Notice of acquisition where owner is not traceable or the ownership is in dispute (to be published in the official gazette).

Annexure I.—Supply Department (Main Sectt.) O. M. No. M.-8(7), dated the 20th January, 1942, regarding principles governing compensation payable for articles requisitioned.

Annexure J.—Form No. W.S.B. 159. Order determining compensation.

ANNEXURE A.

Rule 75A of the Defence of India Rules.

Requisitioning of property.

75A. (*1*) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, moveable or immoveable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning :

Provided that no property used for the purpose of religious worship and no such property as is referred to in rule 66 or in rule 72 shall be requisitioned under this rule.

(*2*) Where the Central Government or the Provincial Government has requisitioned any property under sub-rule (*1*), that Government may use or deal with the property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official gazette, a notice stating that the Central or Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

(*3*) Where a notice of acquisition is served on the owner of the property or published in the official gazette under sub-rule (*2*) then at the beginning of the day on which the notice is so served or published, the property shall vest in Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

(*4*) Whenever in pursuance of sub-rule (*1*) or sub-rule (*2*) the Central Government or the Provincial Government requisitions or acquires any moveable property, the owner thereof shall be paid such compensation as that Government may determine.

Provided that, where immediately before the requisition, the property was by virtue of a hire purchase agreement in the possession of a person other than the owner, the amount determined by Government as the total compensation payable in respect of the requisition or acquisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement in such manner as an arbitrator appointed by the Government in this behalf may decide to be just.

(*5*) The Central Government or the Provincial Government may, with a view to requisitioning any property under sub-rule (*1*) or determining the compensation payable under sub-rule (*4*), by order—

(*a*) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified.

(*b*) direct that the owner, occupier or person in possession of the property shall not without the permission of Government dispose of it or where the property is a building, structurally alter it till the expiry of such period as may be specified in the order.

(*5a*) Without prejudice to any powers otherwise conferred by these Rules, any person authorised in this behalf by the Central Government or the Provincial Government may enter any premises and inspect such premises and any property therein or thereon for the purpose of determining whether, and, if so, in what manner, an order under this rule should be made in relation to such premises or property, or with a view to securing compliance with any order made under this rule.

(*6*) Any orders made, and any action taken, under or in relation to rule 76, 79 or 83 before the 16th May 1942, shall be deemed to have been made or taken under or in relation to this rule and to be as valid as if this rule had been then in force.

(*7*) If any person contravenes any order made under this rule he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

ANNEXURE B.

Section 19 of the Defence of India Act, 1939 (XXXV of 1939).

19. (*1*) Where by or under any rule made under this Act any action is taken of the nature described in sub-section (*2*) of section 299 of the Government of India Act, 1935, there shall be paid compensation, the amount of which shall be determined in the manner, and in accordance with the principles, hereinafter set out, that is to say :— Compensation to be paid in accordance with certain principles for compulsory acquisition of immovable property, etc.

(*a*) Where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement.

(*b*) Where no such agreement can be reached, the Central Government shall appoint as arbitrator a person qualified under sub-section (3) of section 220 of the above-mentioned Act for appointment as a Judge of a High Court.

(*c*) The Central Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property acquired, to assist the arbitrator, and where such nomination is made, the person to be compensated may also nominate an assessor for the said purpose.

(*d*) At the commencement of the proceedings before the arbitrator, the Central Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation.

(*e*) The arbitrator in making his award shall have regard to—

(*i*) The provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable ; and

(*ii*) Whether the acquisition is of a permanent or temporary character.

(*f*) An appeal shall lie to the High Court against an award of an arbitrator except in cases where the amount thereof does not exceed an amount prescribed in this behalf by rule made by the Central Government.

(*g*) Save as provided in this section and in any rules made thereunder, nothing in any law for the time being in force shall apply to arbitrations under this section.

(*2*) The Central Government may make rules for the purpose of carrying into effect the provisions of this section.

(*3*) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the procedure to be followed in arbitrations under this section ;

(*b*) the principles to be followed in apportioning the costs of proceedings before the arbitrator and on appeal ;

(*c*) the maximum amount of an award against which no appeal shall lie.

ANNEXURE C.

(*i*) *Statement showing the delegation of powers under Rule 75A of the Defence of India Rules made by the Supply Department (excluding delegations in connection with any procedure specially prescribed, e.g. Frustrated Cargoes).*

Rules or Sub-Rule.	To whom delegated.	Conditions of delegation.	No. and date of Notification.
Sub-rules (*1*) and (*5*) of Rule 75A.	Electrical Commissioner with the Government of India.	In respect of any article or thing in the possession of any undertaking engaged in the generation of supply of electrical energy.	No. 346, dated the 29th April 1942, as amended by No. 484, dated the 4th June 1942.
Sub-rule (*5*) of Rule 75A.	Controller of Supplies, Bengal Circle, Bombay Circle, Punjab Circle, Sind Circle, South India Circle, U. P. Circle.	In respect of any animal product, article or thing within their respective circles.	No. 346, dated the 29th April 1942.
Rule 75A . .	Machine Tool Controller	Powers to requisition any article, to make further orders in connection with the requisitioning, to dispose of and use any requisitioned article, to require information relating to any article or to prohibit the disposal of any article which is a scheduled machine tool for the purposes of the Machine Tool Control Order, 1941.	Do.
Sub-rule (*1*) of Rule 75A.	Director General, Indian Medical Service.	In respect of drugs and medicinal supplies	No. 501, dated the 18th June 1942.
Sub-rule (*5*) of Rule 75A.	Any D. A. D. G. (Medical Supplies).	Ditto .	No. 562, dated the 23rd June 1942.
Sub-rules (*1*) and (*5*) of Rule 75A.	Dir. Genl., Shipbuilding and Repairs.	In respect of any stores or materials that may be required for ship repairs and ship construction.	No. 504, dated the 10th June 1942.
Sub-rule (*5*) of Rule 75A.	(1) Dy. Controller of Supplies (General), Bombay Circle. (2) Dy. Controller of Supplies, South India Circle.	In respect of any moveable property within their respective circles for a further period from the 20th Nov. 1942 to 28th Feb. 1943.	No. 1108, dated the 18th Nov. 1942.
Sub-rule (*5*) of Rule 75A.	Senior Deputy Controller of Supplies, Bengal Circle.	In respect of any moveable property within the Bengal Circle.	No. 761, dated the 10th August 1942.
Rule 75A . .	(1) C. of S., Bombay Circle (2) C. of S., Bengal Circle. (3) C. of S., Sind Circle. (4) C. of S., S. I. Circle.	As respects timber within— (1) the city and suburban distt. of Bombay : (2) the city of Calcutta and the distts. of Howrah and the 24-Parganas : (3) the city of Karachi, and (4) the province of Madras respectively. For a further period of 3 months with effect from the 20th Nov. 1942.	No. 1109, dated the 18th Nov. 1942.
Sub-rule (*5a*) of Rule 75A.	(1) D. G., I. M. S. (2) D. G., S. R.	....	No. 1021, dated the 28th October 1942.
Sub-rule (*5*) of Rule 75A.	Controller, Leather and Tanning Industries, Cawnpore.	In respect of buffalo hides of the following description and weights :— Wet salted . 30 lbs. and over. Dry salted . 17 ,, Dry brined . 12 ,, Air dried . 10 ,,	No. SS/6(126), dated the 26th January 1943.

(*ii*) *List of Officers under the Supply Department authorised for the purpose of sub-rule (5a) of Rule 75A of the Defence of India Rules.*

(*i*) All Controllers of Supplies,
(*ii*) All Deputy Controllers of Supplies, and
(*iii*) The Assistant Controllers of Supplies of
- (*a*) Bengal Circle,
- (*b*) Bombay Circle,
- (*c*) Punjab Circle,
- (*d*) Sind Circle,
- (*e*) South India Circle, and
- (*f*) United Provinces Circle.

[Supply Department (Main Secretariat) Notification No. 1022, dated the 28th October 1942.]

W. S. B. 15.

ANNEXURE D.

GOVERNMENT OF INDIA.

DEPARTMENT OF SUPPLY.

DEMAND FOR INFORMATION

Under Defence of India Rules

No. Dated

To

In exercise of the powers conferred by sub-rule (*5*) of rule 75A of the Defence of India Rules, *the Central Government is pleased to / †and delegated to me by the notification of the Government of India in the Department of Supply No. dated the , I hereby direct—

(1) that you or your agents shall, on or before the day of , furnish and produce to the information enumerated in Schedule A hereto annexed, concerning the articles or things enumerated in Schedule B hereto annexed;

(2) that from the time of the service of this order on you, you or your agents shall not, except with *the permission / †my permission or under *the directions of the Central Government, / †my directions sell, transfer, remove, consume or otherwise dispose of any such article or thing as is enumerated in Schedule B hereto annexed until the expiry of a period of days from the date on which complete information, as called for in Schedule A, hereto annexed, concerning the articles or things enumerated in Schedule B, hereto annexed, has been supplied and an acknowledgment of receipt by of the information to be furnished under (1) above is received. The said period of days shall commence from the date of acknowledgment aforementioned.

* Secretary to the Govt. of India.
† (Designation of the delegate.)

* To be scored out when the order is to be issued by a delegate of the Central Govt.
† To be scored out when the order is to be issued by the Central Government.

[P. T. O.

SCHEDULE A.

Nature of information demanded

SCHEDULE B.

Description of Articles.

ANNEXURE E.

RULE 119 OF THE DEFENCE OF INDIA RULES.

119. (*1*) Save as otherwise expressly provided in these Rules, every authority, officer or person who makes any order in writing in pursuance of any of these Rules shall, in the case of an order of a general nature or affecting a class of persons, publish, notice of such order in such manner as may, in the opinion of such authority, officer or person, be best adapted for informing persons whom the order concerns and in the case of an order affecting an individual person serve or cause the order to be served on that person— Publication, affixation and defacement of notices.

(*i*) personally, by delivering or tendering to him the order, or

(*ii*) by post, or

(*iii*) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the house where he ordinarily resides;

and thereupon, the persons or person concerned shall be deemed to have been duly informed of the order.

(*2*) Any police officer, and any other person authorised by Government in this behalf may, for any purpose connected with the defence of British India, the public safety, the maintenance of public order, the efficient prosecution of the war, maintaining supplies and services essential to the life of the community or the administration of these rules, affix any notice to, or cause any notice to be displayed on, any premises, vehicle or vessel, and may for the purpose of exercising the power conferred by this rule enter any premises, vehicle or vessel at any time.

(*3*) Any person authorised by Government in this behalf may, for any purpose mentioned in sub-rule (*2*), by order direct the owner or other person in possession or control of any premises, vehicle or vessel to display any notice on, or in, the premises,vehicle or vessel in such manner as may be specified in the order.

(*4*) If any person without lawful authority removes, alters, defaces, obliterates or in any way tampers with any notice affixed or displayed in pursuance of these Rules, or contravenes any order under sub-rule (*3*), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

W. S. B. 157.

ANNEXURE F.

GOVERNMENT OF INDIA.

DEPARTMENT OF SUPPLY.

REQUISITION ORDER.

No. Dated, the

To

Whereas in *the opinion of the Central Government / †my opinion it is expedient for securing the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community to make the following order :—

Now therefore in exercise of the powers conferred on the Central Government by sub-rules (*1*) and (*5*) of rule 75A of the Defence of India Rules, *the Central Government / †and delegated to me by the notification of the Government of India in the Department of Supply No. dated the I hereby :—

(*i*) requisition with effect from the- the property specified in the Schedule hereto annexed, and

(*ii*) direct and every other person in possession of the said property to deliver it to , and meanwhile not to dispose of the property in any manner without *the permission of the Central Government. / †my permission.

SCHEDULE.

Secretary to the Government of India.

† *Designation of the delegate.*

*To be scored out when the order is to be issued by a delegate of the Central Government.

†To be scored out when the order is to be issued by the Central Government.

W. S. B. 158.

ANNEXURE G.

GOVERNMENT OF INDIA.

DEPARTMENT OF SUPPLY.

Notice of acquisition where owner is known and there is no dispute as to ownership.

No. Dated, the

To

NOTICE.

Whereas by order No. dated the property specified in the Schedule hereto annexed has been requisitioned by the Central Government with effect from the 194 , notice is hereby given in pursuance of sub-rule (*2*) of rule 75A of the Defence of India Rules, that the Central Government has decided to acquire the said property in pursuance of the said rule. You are further informed that by virtue of sub-rule (*3*) of the said rule, at the beginning of the day on which this notice is served on you, the said property will vest in the Central Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof will end.

SCHEDULE.

Secretary to the Government of India.

W. S. B. 160.

ANNEXURE H.

GOVERNMENT OF INDIA.

DEPARTMENT OF SUPPLY.

[ ] Not to appear in the Gazette.

[Notice of acquisition where owner is not traceable or the ownership is in dispute (to be published in the official gazette).]

No. Dated, the

NOTICE.

Whereas by order No. dated the , the property specified in the Schedule hereto annexed has been requisitioned by the Central Government with effect from the

And whereas (the owner of the said property is not readily traceable) (the ownership of the said property is in dispute):

Now therefore in pursuance of sub-rule (*2*) of rule 75A of Defence of India Rules, notice is hereby given to all whom it may concern that the Central Government has decided to acquire the said property in pursuance of the said rule, and that by virtue of sub-rule (*3*) thereof, at the beginning of the day on which this notice is published in the official Gazette, namely the Gazette of India, the said property shall vest in the Central Government free from any mortgage, pledge, lien or other similar encumbrance, and the period of the requisition thereof shall end.

SCHEDULE

Secretary to the Government of India.

SECRET.

ANNEXURE I.

OFFICE MEMORANDUM NO. M. 8(7), DATED THE 20TH JANUARY 1942, FROM SUPPLY DEPARTMENT (MAIN SECRETARIAT), TO DIRECTORATE GENERAL, MUNITIONS PRODUCTION, DIRECTORATE GENERAL, SUPPLY AND ALL CONTROLLERS OF SUPPLIES.

A copy of Office Memorandum No. 209-OR/39, dated the 15th January 1942, from the Defence Co-ordination Department is circulated herewith together with a copy of its enclosure. The principles laid down by the Government of India for determining the compensation to be paid for articles requisitioned under rule 83* of the Defence of India Rules should be carefully studied, and the following comments should be borne in mind :—

(*a*) An officer reporting upon or taking any decision in requisitioning proceedings should in the first instance consider the market price of the goods concerned on the date when requisitioning took place. "Market price" means the price for which, in the absence of Government interference, the article or articles could be sold to a private purchaser in the ordinary course of business.

(*b*) If the market price is evidently inflated, it is necessary to go back to the price which it was *reasonable* for the owner to pay when he acquired the goods, or the *reasonable* cost to the owner of producing them as the case may be. The important word here—is "*reasonable*" especially in relation to acquired goods. There is no intention of penalising the honest dealer who may have had to pay excessive prices in the ordinary course of his business; on the other hand there is no reason for showing sympathy to the speculator who has bought the goods not in the ordinary course of business but simply to take a large profit. It is worth considering whether the owner of the goods is a regular dealer in goods of that class, and if so whether his acquisition of them was a normal business transaction or not. If the owner is not a regular dealer, or if he is a regular dealer but has built up excessive stocks, it is legitimate in the absence of evidence to the contrary, to suppose that he is engaging in a speculative transaction.

It should be noted that no question of profit arises in any case unless the goods are held for sale.

(*c*) "Replacement cost" is to be allowed only in exceptional cases and in respect of goods not held for sale. This provision is meant to cover cases in which the removal of a machine from a factory causes really serious hardship, and similar cases. When "replacement cost" is recommended, the orders of the Government of India will be required and the case will have to be fully stated.

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* Now Rule 75A.

SECRET.

OFFICE MEMORANDUM No. 209-OR/39, DATED THE 15TH JANUARY 1942, FROM DEFENCE CO-ORDINATION DEPARTMENT, TO ALL DEPARTMENTS OF THE GOVERNMENT OF INDIA (EXCEPT LEGISLATIVE ASSEMBLY DEPARTMENT).

The undersigned is directed to refer to sub-rule (*3*)* of rule 83 of the Defence of India Rules, which authorises Government to determine the compensation payable for articles requisitioned or acquired under that rule. Though Government is given a free hand to determine what compensation shall be paid in any particular case, it is clearly desirable that the same principles should be applied whenever action is taken by or on behalf of Government.

2. The question of what these principles should be has recently been examined, and the conclusions reached, which are shown in the attached note, have been accepted by the Finance Department and approved by His Excellency the Governor General. The undersigned is accordingly to request that these principles should be followed by all Departments who make use of rule 83†, and should be communicated by them for guidance to all officers under their control who may be concerned.

Compensation to be paid for articles requisitioned under Defence of India Rule 83.†

1. The maximum amount of compensation to be given will be the market price at the time of requisition of an article; but in most cases there will be no need for requisitioning if it is proposed to pay the market price.

2. If the requisitioning authority considers the market price to be too high the price paid will be :—

(*i*) the price which it was reasonable for the owner to pay when he acquired the goods, *plus* a reasonable profit thereon if he acquired the goods for sale; or

(*ii*) the reasonable cost to the owner of producing the goods at the time when he produced them, *plus* a reasonable profit thereon if he produced them for sale.

The requisitioning authority will, in determining what price it was reasonable for the owner to pay, take into account the normal nature and requirements of the owner's business. In the case of articles held for purely speculative purposes a strict standard should be applied.

3. In exceptional cases (not in respect of goods held for sale) where physical replacement of the requisitioned goods is really necessary to enable the owner to carry on his business and actually takes place, replacement cost may, under the special orders of Government, be given. Each case will have to be examined on its merits and no general principles can be laid down in advance.

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* Now sub-rule (*4*) of rule 75A.

† Now rule 75A.

W. S. B. 159.

ANNEXURE J.

GOVERNMENT OF INDIA.

DEPARTMENT OF SUPPLY.

Order determining compensation.

No. Dated, the

To

Whereas in pursuance of sub-rule (*1*) of rule 75A of the Defence of India Rules the property hereinafter specified has been requisitioned by the Central Government with effect from the

And whereas in pursuance of sub-rule (*2*) of rule 75A of the said Rules the said property has been acquired by the Central Government with effect from the :

Now therefore in exercise of the powers conferred by sub-rule (*4*) of rule 75A of the said Rules the Central Government hereby determines that the compensation payable to the owner of the said property in respect of the said requisition and acquisition shall be as follows :—

GIPD—(S) 323DofS—18-2-43—400.

N174-43-2

Pol 2029 dt 28 March 1944

To

The Secretary to the Hon'ble the Resident
in Mysore, B a n g a l o r e.

Sir,

Re: requisition of moveable property
located in Indian States.

With reference to your letter No. F. 26(1)-42/W., dated 24th February 1944, I am directed to note that in cases where there is disagreement as to the compensation to be paid in respect of articles requisitioned or on any other question, the Hon'ble the Resident will refer the matter to the Political Department. This Government presume that the reference contemplated is merely to elicit or obtain views of the Political Department before the requisition proceedings are concluded. For obvious reasons the said Department cannot act as an arbitrator or give a final decision on any issue arising out of ~~the~~ such proceedings.

In this connection, I am to invite reference to sub-rule 4 of rule 75(A) of the Defence of India Rules as applied to Mysore under which the owner of the moveable property requisitioned or acquired should be paid such compensation as the Government may determine. It is this Government alone which is therefore competent under this rule to take final decisions in respect of matters connected with the requisition or acquisition proceedings. This Government have, however, no objection either to the department at whose instance acquisition proceedings were initiated or the Political Department expressing its

own opinion in any matter, the State having the full discretion to decide whether the request of the Central Government officers can be complied with without serious prejudice to its own interest and also having the final right of fixing compensation for the properties requisitioned or acquired in its jurisdiction. The State which has enacted its counterpart of the Defence of India legislation can be trusted to assess compensation in a fair and reasonable manner having regard to all the relevant circumstances and in the light of information or opinion if any given by the Department at whose instance the requisition proceedings may have been undertaken.

I am further to add that this Government will as far as possible follow the principles laid down in the Supply Department's memorandum for fixing compensation for articles requisitioned or acquired within the State.

I have etc.,

23/3/44

Chief Secretary to Government.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat.

Dated Bangalore, ...24th March 1944.

No.

FROM

The Chief *Secretary to the Government of His Highness the Maharaja of Mysore.*
B a n g a l o r e.

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

Sir,

Re: requisition of moveable property located in Indian States.

With reference to your letter No. F. 26(1)-42/W., dated 24th February 1944, I am directed to note that in cases where there is disagreement as to the compensation to be paid in respect of articles requisitioned or on any other question, the Hon'ble the Resident will refer the matter to the Political Department. This Government presume that the reference contemplated is merely to elicit or obtain views of the Political Department before the requisition proceedings are concluded. For obvious reasons the said Department cannot act as an arbitrator or give a final decision on any issue arising out of such proceedings.

In this connection, I am to invite reference to sub-rule 4 of rule 75(A) of the Defence of India Rules as applied to Mysore under which the owner of the moveable property requisitioned or acquired should be paid such compensation as the Government may determine. It is this Government alone which is, therefore, competen under this rule to take final decisions in respect of matters connected with the requisition or acquisition proceedings. This Government have, however, no objection either to the department at whose instance acquisition proceedings were initiated or the Political Department expressing its own opinion in any matter, the State having the full discretion to decide whether the quest of the Central Government officers can be complied with

without serious prejudice to its own interest and also having the final right of fixing compensation for the properties requisitioned or acquired in its jurisdiction. The State which has enacted its counterpart of the Defence of India legislation can be trusted to assess compensation in a fair and reasonable manner having regard to all the relevant circumstances and in the light of information or opinion, if any, given by the Department at whose instance the requisition proceedings may have been undertaken.

I am further to add that this Government will as far as possible follow the principles laid down in the Supply Department's memorandum for fixing compensation for articles requisitioned or acquired within the State.

I have the honour to be,
Sir,
Your most obedient servant,

for Chief Secretary to Government.

Confidential.

Bangalore,
8th April 1944.

Dear Mr. Maqbool Mahmood,

I send herewith a note on the subject of the procedure suggested by the Political Department for requisitioning moveable property located in Indian States. As it is possible that some other States have received from their Political Officers letters similar to the one we have received from the Mysore Residency, I think it is desirable for the Ministers to exchange views as to the correct attitude to be adopted in this matter. I therefore request that the subject may be brought up for discussion at the ensuing meeting of the Committee of Ministers.

Yours sincerely,

(sd.) N. Madhava Rau.

Mir Maqbool Mahmood, Esq., Bar-at-Law,
Secretary, Committee of Ministers,
Chamber of Princes,
Council House,
NEW DELHI.

" Copy.

PROCEDURE FOR REQUISITIONING MOVEABLE PROPERTY IN THE STATE.

Under Rule 75 A of the Defence of India Rules in force in Mysore, the Government may, whenever it considers it necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies or services essential to the life of the community, requisition any moveable property. When any property has been so requisitioned, it may be acquired by serving a notice on the owner. On such acquisition the property shall vest in the Government, free from any mortgage, pledge, lien or other similar encumbrance. When any moveable property is so acquired the owner thereof shall be paid such comepensation as the Government may determine. Thus under rule 75 A of the Rules moveable property in the State has, whenever necessary, to be requisitioned and acquired by this Government and the compensation payable has also to be determined by them.

The Mysore Residency in their letter dated 24th February 1944 suggested that the following procedure might be adopted for requisitioning moveable property located in the State but required by British India:-

" Officers of the Government of India empowered to requisition stores will, whenever they desire to requisition stores in the State, approach the Residency who will arrange with the State for the requisitioning and acquisition of the goods and for determining the compensation to be paid. The State will for fixing compensation follow the principles laid down by the Supply Department of the Government of India and consult the Resident before finally fixing it. The Resident will in his turn consult the appropriate Branch Secretariat of the Supply Department through the Controller of Supplies concerned and the officers requisitioning the goods will also indicate what they consider as reasonable prices. In cases of disagreement as to the comepensation to be paid or any

any other matter the Resident will refer the matter to the Political Department. "

The Residency has been informed in reply that under the rules it is this Government alone which is competent to ake a final decision in respect of matters connected with requisition or acquisition proceedings and that while they have o objection to the department offering its own opinion on any matter, the State should have full discretion to decide the question of compensation or any other connected matter. They have also been informed that the Political Department cannot act as an arbitrator and give a final decision on any issue arising out of the proceedings.

It is probable that the Governments of other States have also received similar letters from Political Officers. It is desirable for the Ministers to exchange views as to the correct attitude to be adopted in this matter.

W 174-43-3

No.F.26(1)-42/W. 2616/W

From

The Secretary to the Hon'ble the Resident in Mysore.

To

The Chief Secretary to the Government of His Highness the Maharaja of Mysore, Bangalore.

Bangalore, the 1st May 1944.

REQUISITION OF MOVABLE PROPERTY LOCATED IN INDIAN STATES.

- - -

I am directed to refer to your letter No.Pol.2029, dated the 28th March 1944, and to state that the Political Department confirm the presumption contained in paragraph 1 of it. In cases where there is disagreement between the local officers of the Government of India, Department of Supply and the State, this Residency will refer the case to the Political Department in order that they may

further

further examine the matter in consultation with the Supply Department. There is no intention of interfering with the State's right of fixing what seems to them to be reasonable compensation.

I have the honour to be,
Sir,
Your most obedient servant,

a.r. Baker

SECRETARY TO THE RESIDENT.

MAPP:

W 174-43-4

OFFICE OF THE HON'BLE THE RESIDENT
IN MYSORE.

Bangalore, the 22nd May 1944.

No.F.26(1)-42/W.

A copy of the undermentioned paper is forwarded to the Chief Secretary to the Government of His Highness the Maharaja of Mysore, Bangalore,

for information with reference to letter from this Residency No.F.26(1)-42/W, dated the 24th February 1944.

CHIEF SECRETARY. 23. MAY 1944 GOVT OF MYSORE

By order, etc.,

SECRETARY TO THE RESIDENT.

- - -

Office memorandum from the Government of India, Department of Supply, No.M-8(16)/44, dated the 15th April 1944.

No.M.-8(16)/44.
Government of India,
Department of Supply (Main Secretariat
New Delhi, the 15th April 1944.

OFFICE MEMORANDUM

Subject:- Amendment to the form of Demand for Information (W.S.B.-15).

The undersigned is directed to invite a reference to the form of Demand for Information (W.S.B.-15) and to say that for the existing paragraph (2) of the said form, the following paragraph may be substituted:-

"(2) that from the time of the service of this order on you, you or your agents shall not, except with *the permission or @my permission under *the directions of the Central Government, sell, @ my directions, transfer, remove, consume or otherwise dispose of any such article or thing as is enumerated in Schedule B hereto annexed until the expiry of a period of.....days from the date on which a letter admitting that complete information as called for in (1) above has been received from you is sent by *the Central Government." / @me".

(M. Aslam)
Asst. Secretary to the Govt. of India

To

The Secretary to the Hon'ble the
Resident in Mysore, Bangalore.

Sir,

Requisition of movable property located in Indian States.

With reference to your letter No. F. 26(1)-42/W., dated 24th February 1944 on the above subject, I am directed to state that this Government have no objection generally to the adoption of the procedure indicated in para 2 of your letter subject, however, to the following observations.

In case of disagreement as to the compensation to ~~xxx~~ be paid or on any other question it is stated, that the Hon'ble the Resident will refer the matter to the Political Department. It is presumed that this reference is merely to elicit or obtain the views of the Political Department before the requisition proceedings are concluded and not that the said department may act as an arbitrator or give a final decision ~~regarding the necessity for acquisition or~~ quantum of ~~compensation~~ compensation, which ~~should~~ would be binding on the State. Such a procedure will be inconsistent with the sovereign rights of the State which alone is expected under its counterpart of the Defence of India Act and the rules ~~under to form its own judgment~~ to take final decisions in respect of ~~both these matters~~ matters. I am to state, therefore, that while there can be no objection either to the department at whose instance acquisition proceedings are initiated or the Political Department expressing its own opinion in the matter, the State should have

the full ~~full~~ discretion to decide whether the request of the Central Government officers can be complied with without serious prejudice to its own interest and should also have the final right of fixing compensation for the goods requisitioned within its jurisdiction. I am to add that the State could be trusted to assess compensation in a fair and reasonable manner, having regard to all the relevant circumstances and in the light of information or opinion, if any, given by the department at whose instance the requisition proceedings have been taken.

I have etc.,

13/3/47

Chief Secy. to Govt.

Procedure for requisitioning moveable property in the State.

Under rule 75A of the Defence of India Rules in force in Mysore, the Government may, whenever it considers it necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies or services essential to the life of the community, requisition any moveable property. When any property has been so requisitioned, it may be acquired by serving a notice on the owner. On such acquisition the property shall vest in the Government, free from any mortgage, pledge, lien or other similar encumberance. When any moveable property is so acquired the owner thereof shall be paid such compensation as the Government may determine. Thus under rule 75A of the Rules moveable property in the State has, whenever necessary, to be requisitioned and acquired by this Government and the compensation payable has also to be determined by them.

The Mysore Residency in their letter dated 24th February 1944 suggested that the following procedure might be adopted for requisitioning moveable property located in the State but required by British India.

Officers of the Government of India, empowered to requisition stores will, whenever they desire to requisition stores in the State, approach the Residency who will arrange with the State for the requisitioning and acquisition of the goods and for determining the compensation to be paid. The State will for fixing compensation follow the principles laid down ~~by the principles laid down by~~ by the Supply Department of the Government of India and consult the Resident before finally fixing it. The Resident

will in his turn consult the appropriate Branch Secretariat of the Supply Department through the Controller of Supplies concerned and the officers requisitioning the goods will also indicate what the consider as reasonable prices. In cases of disagreement as to the compensation to be paid or any other matter the Resident will refer the matter to the Political Department"

The Residency has been informed in reply that under the rules it is this Government alone which is competent to take a final decision in respect of matte connected with requisition or acquisition proceedings and that while they have no objection to the department offerring its own opinion on any matter, the State should have full discretion to decide the question of compensation or any other connected matter. They have also been informed that the Political Departmen cannot act as an arbitrator and give a final decisio on any issue arising out of the proceedings.

for
S/L

It is probable that the Govt of Other States have also been informed received similar letters from Political Offices. It is desirable that the Members exchange views as to the correct attitude to be adopte in this matter